

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
ATLANTA BRANCH OFFICE

**590-600 REALTY CORP.**

**and**

**CASE 29-CA-65971**

**SERVICE EMPLOYEES  
INTERNATIONAL UNION,  
LOCAL 32BJ**

*Marcia E. Adams Esq.,*

for the Government.<sup>1</sup>

*Michael Tiliakos, Esq.,*

for the Respondent.<sup>2</sup>

*Judith I. Padow, Esq.,*

for the Charging Party.<sup>3</sup>

**DECISION**

**STATEMENT OF THE CASE**

**William N. Cates, Administrative Law Judge.** This is a refusal to provide, or delaying to provide, certain requested relevant information to Service Employees International Union, Local 32BJ (the Union) case, which I heard in trial in Brooklyn, New York, on March 6, 2012. This case originates from a charge filed on September 30, 2011<sup>4</sup> by the Union. The prosecution of the case was formalized on December 30, when the Regional Director for Region 29 of Board, acting in the name of the Acting General Counsel, issued a complaint and notice of hearing (the complaint) against 590-600 Realty Corp. (the Company). It is alleged in the complaint that the Company's failure to provide, or its delaying to provide, the requested information violates Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).

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<sup>1</sup> I shall refer to counsel for the Acting General Counsel as counsel for the Government and to the National Labor Relations Board (Board) as the Government.

<sup>2</sup> I shall refer to counsel for the Respondent as counsel for the Company and shall refer to the Respondent as the Company.

<sup>3</sup> I shall refer to counsel for the Charging Party as counsel for the Union and I shall refer to the Charging Party as the Union.

<sup>4</sup> All dates are 2011 unless otherwise indicated.

The Company, in a timely filed answer to the complaint, denied having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified. I have studied the whole record, and based on more detailed findings and analysis below, I conclude and find the Company violated the Act essentially as alleged in the complaint.

## **Findings of Facts**

### **I. JURISDICTION**

The Company is a corporation with an office and place of business in Hempstead, New York, where it has been, and continues to be, engaged in managing two residential buildings. During the past 12 months, a representative period, the Company derived gross revenues in excess of \$500,000, and, purchased and received at its 590-600 Fulton Avenue, Hempstead, New York location goods, and materials, valued in excess of \$5000 from other enterprises located within the State of New York, each of which enterprises had received those goods directly from points located outside the State of New York. The parties admit and I find the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### **II. LABOR ORGANIZATION STATUS**

The parties admit, and I find, that at all times material, the Union has been and continues to be a labor organization within the meaning of Section 2(5) of the Act.

### **III. BARGAINING UNIT**

It is admitted the following employees of the Company (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All classifications of service employees working for the Company at 590-600 Fulton Avenue, Hempstead, NY, excluding office and clerical employees, supervisors and guards as Defined in the Act.

At all material times the Union has been designated as the exclusive collective-bargaining representative of the unit, such recognition embodied in successive bargaining agreements, the most recent of which is effective from June 21, 2006 until June 20, 2010, and assumed by the Company on March 8, 2010, by sales agreement and under an "Assignment of Union Contract," signed by the Company on March 8, 2010.

## IV. THE FACTS

Handymen Victor Trejo and Brian Corcoran, as well as Union Deputy Director Linda Bermas, testified for the Government in support of the complaint allegations. Superintendent Mohammed Yusef testified for the Company. Otoneil Figueroa-Duran, who is employed by the Union as a grievance and field representative, testified in rebuttal for the Union.

There are 330 apartments at the 590-600 Fulton Avenue location in question where the Company provides general maintenance and cleaning services. The bargaining unit consists of two handymen, three porters, and a superintendent. The handymen perform various tasks in advance of tenants moving into the apartments, such as drywall, floor, and cabinet repairs. The handymen also perform repairs in apartments for current occupants pursuant to superintendent issued work orders. Porters clean the buildings. The superintendent ensures the work services are properly performed and in a timely manner.

On April 28, the parties commenced negotiations for a collective-bargaining agreement to succeed the earlier referenced one and met on various occasions thereafter. Two of the Union's information requests, at issue herein, were made in writing (June 10 and 22), while the other one, for a number of items, was orally made at the parties June 14 negotiating session.

The parties, in a lengthy on the record stipulation, agreed certain of the requested information was provided and further stipulated as to the dates and in what format the information was provided. I have set forth the complaint paragraph outlining the requests and immediately thereafter the parties stipulations regarding what, when, and in what format the information was provided.

The Union's first written request, made on June 10, asked the Company to furnish the Union with the regular weekly hours, days of work, and the dates of hire for the unit employees.

The Company provided in writing, on June 13, the days of work and on December 9, the dates of hire but never, pursuant to the June 10 request, provided the regular weekly hours for the unit employees.

During the parties June 14 negotiations, the Union requested the Company furnish the Union the following information;

- a. The date of hire, regular hourly wage rate, regular daily and weekly hours, job description and duties, and benefits provided to employee Premchand Ramnauth.

Premchand Ramnauth's date of hire was provided on December 9, his regular hourly wage rate was first provided on October 12, then retracted, and thereafter, in a one line summary, provided on November 30. On October 12, a range of weekly hours was provided for Ramnauth but no documents were provided with respect to his daily and weekly hours. Ramnauth's job description, duties, and benefits were provided on October 12. Ramnauth's payroll records were provided on December 15.

The Union indicated, at trial, it sought the requested information on Ramnauth because the Company did not consider him to be in the unit and, as such, could pay him whatever the Company determined appropriate. The Union considered Ramnauth to be in the unit performing bargaining unit work.

Handyman Trejo testified Ramnauth came to work at the Company in September 2010 and worked Monday through Friday until November 2011. Trejo testified Ramnauth was paired to work with him three to four times per week performing regular work orders. Handyman Corcoran testified he also worked along side Ramnauth in 2010 and until November 2011. Corcoran said he and Ramnauth worked on vacant apartments, as well as, performing work orders on occupied apartments repairing drywall, toilets, sinks, vanities, and floors. Corcoran testified Ramnauth performed major repairs such as plumbing during the first 5 months he was with the Company. Corcoran and Trejo did not do major repairs.

Trejo and Corcoran both testified they, as well as Ramnauth, punched timecards at work. Trejo observed Ramnauth clocking out on various occasions. Superintendent Yusef testified he, without anyone from management telling him to do so, established a clock-in, clock-out timecard system at the Company. Yusef testified he utilized the timecards to prepare a timesheet which he transmitted to management. Yusef further testified that when he was cleaning up the maintenance shop for the 2011 Christmas party he threw "a lot of stuff" away including the original time cards for the previous years. Yusef testified no one told him to dispose of the timecards that he was just cleaning out the shop.

Union grievance and field representative Otoneil Figueroa-Duran, called as a rebuttal witness, testified he spoke by telephone with Superintendent Yusef in February and Yusef told him he placed timecards in his desk, and at the end of the year, placed them in a storage box in the building. Figueroa-Duran acknowledged he did not specifically ask Yusef about the timecards for 2011.

b. Unit employees' dates of hire.

The dates of hire for the unit employees were provided by email on December 9.

c. Unit employees' vacation, sick leave, holiday and personal leave entitlement and usage for 2010 and 2011.

On November 30, the Company notified the Union it did not, at that time, have records of the unit employees' usage of vacation time for 2011 but, would continue to search for any documents responsive to the request. Thereafter on December 9, the Company supplied the Union the vacation usage for 2011 and on December 14, provided the same information for 2010. No records or information was provided with respect to sick leave, holiday, and personal days usage for the unit employees.

d. Information about applications and reports submitted to the Town of Hempstead Industrial Development Agency, regarding weatherization and renovation work to be performed at 590-600

Fulton Avenue, Hempstead, NY, and a description of the work already performed and expected to be performed at 590-600 Fulton Avenue, Hempstead, NY.

5 A partial response about the Industrial Development Agency applications for weatherization and renovation was provided in writing on October 12 with an additional partial response in writing on November 30. The applications were provided on December 21; however, no Industrial Development Agency Reports were ever provided.

- 10 e. Information about the alternate health care plan listed in the Company's bargaining proposal.

15 The Company provided information in writing on October 12, November 9 and 30 on its efforts regarding alternate health care for the unit employees.

- f. Description of the work performed and the names of contractors who performed or would be hired to perform weatherization and renovation work.

20 On October 12, the Company provided a description of the work to be performed and on November 11 provided the names of the contractors to perform the work.

25 By letter of June 22, the Union requested the Company furnish the Union with the following information:

- 30 a. Applications and reports submitted to the Town of Hempstead Industrial Development Agency, regarding weatherization and renovation work to be performed at 590-600 Fulton Avenue, Hempstead, NY, the names of contractors retained to perform weatherization and renovation work at 590-600 Fulton Avenue, Hempstead, NY, and a description of work already performed and expected to be performed at 590-600 Fulton Avenue, Hempstead, NY.

35 The applications submitted to the Town of Hempstead Industrial Development Agency regarding weatherization and renovation were provided in writing to the Union on December 21. A description of the contractors work was provided on October 12. The names of contractors were supplied on either November 11, and or, November 30. The reports were  
40 never provided.

- b. Unit employee vacation entitlement and usage in 2011.

45 The Company provided vacation entitlement and usage information to the Union in writing on December 9.

- c. Documents related to the Company’s bargaining proposal for providing alternate health care plans for Unit employees.

Information concerning the Company’s proposal for alternate healthcare coverage for the unit employees was provided on October 12, November 9 and or 30.

- d. Regarding employee Premchand Ramnauth, his date of hire, regular hourly wage, daily and weekly hours, job duties and description and duties and benefits received.

This request for information on employee Ramnauth is essentially the same as the Union’s June 14 request set forth elsewhere herein, and the response by the Company is the same as earlier set forth.

## V. ANALYSIS

It is helpful to review certain guidance of the Board and courts regarding the obligation of employers to furnish information requested by employee representatives. It is clear and accepted that an employer has a statutory obligation, upon request of the representative of unit employees, to furnish or supply potentially relevant information that may be of use to the union in carrying out its responsibilities as exclusive bargaining representative. *NLRB v. Acme Industrial Co.* 385 U.S. 432, 435–436 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979). Stated differently, an employer is obligated, upon request, to furnish a union with information that would help the union make a more informed judgment about the issues or concerns the information addresses. The key question in determining whether information must be provided is one of relevancy. The standard for relevancy is a liberal discovery-type standard. *Acme Industrial Co.*, supra at 437. The sought after information need not necessarily be dispositive of the issue between the parties but rather only of some bearing upon it and of probable use to the labor organization in carrying out its statutory responsibilities. *Bacardi Corp.*, 296 NLRB 1220, 1223 (1989). Information concerning terms and conditions of employment of unit employees is presumptively relevant and must be furnished. *Madison Center* 330 NLRB 1 (2000). Not only must an employer provide relevant information, upon request, it must do so “reasonably promptly” and “in useful form.” *Detroit Newspaper Agency* 317 NLRB 1071, 1072 (1995). Any unreasonable delay in furnishing requested information, absent presentation of a valid defense, is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. *American Signature, Inc.* 334 NLRB 880, 885 (2001). In evaluating what constitutes an unreasonable delay in providing information the Board in *West Penn Power Co.*, 339 NLRB 585, 587 (2003), set forth the following:

In determining whether an employer has unlawfully delayed responding to an information request, the Board considers the totality of the circumstances surrounding the incident. ‘Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow.’ *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). In evaluating the promptness of the response, ‘the Board will consider the

complexity and extent of information sought, its availability, and the difficulty in retrieving the information.’ *Samaritan Medical Center*, 319 NLRB 392, 398 (1995).

5 The Union’s June 10 request to the Company for the days of work, dates of hire, and regular weekly hours for the unit employees constitutes information concerning terms and conditions of employment and is presumptively relevant and must be timely furnished. I find the Company timely (3 days after the request) provided the days of work information to the Union for the unit employees. Although the Company provided the dates of hire for the unit employees on December 9, I find, it did not do so in a reasonably prompt time. There are only 10 six (or potentially seven) unit employees, yet, the Company took, without a valid explanation, 6 months to supply the hire dates to the Union. Such information was of the kind readily available to the Company, and required little, if any, effort to provide. The unreasonable delay in providing this relevant information violates the Act, and I so find. The Company, without 15 explanation, never provided the regular weekly hours of work for the unit employees. Such failure also violates Section 8(a)(5) of the Act.

The first question to be addressed with respect to the information the Union sought about employee Ramnauth is whether the information was relevant. I find it was. The Union 20 considered Ramnauth to be in the unit while it appears the Company did not. The testimony of Handymen Trejo and Corcoran, which I credit, clearly establishes Ramnauth worked along side and performed similar job duties as Trejo and Corcoran. The requested information could have a bearing on the issue of Ramnauth’s placement in the bargaining unit. Second, to the extent certain information was provided, was it timely provided? With one exception, I find it was 25 not. The Company took approximately 6 months to provide the hire date of this one employee. The Company, without justification, took approximately 4 months to provide information regarding Ramnauth’s job description, duties and benefits and also took the same length of time to provide only a range of weekly hours for Ramnauth. This type of information would be readily available to the Company and, as noted, only concerned one employee. Ramnauth’s 30 correct wage rate was not provided until November 30, some 5 months after the request. Ramnauth’s regular daily and weekly hours were never provided. To the extent this overall request would include the timecards for Ramnauth, I conclude the Company can not comply with that part of the request. I credit Superintendent Yusef’s testimony that in clearing out his office for a Christmas party he threw the timecards away. Yusef, a unit employee, impressed 35 me as testifying truthfully on this point. The Company can not produce timecards which were destroyed and with no showing of wrong doing by the Company. The unreasonable delay in furnishing portions of this requested information, as well as, the outright failure to provide certain of the other information requested violates Section 8(a)(5) of the Act and I so find.

40 In the absence of a valid defense, I find the Company’s taking approximately 6 months to provide the hire dates for its six unit employees to be unreasonable and a violation of Section 8(a)(5) of the Act. Timely availability of relevant information is essential for a union to carry out its statutory responsibilities.

45 The request on June 14 for unit employees’ vacation, sick leave, holiday and personal leave entitlement and usage was for presumptively relevant information. The Company took no action with respect to this request until November 30, and only then notified the Union it did

not, at that time, have records of the unit employees' usage of vacation time for 2011. The Company, however, did, on December 9, some 6 months after the request, provide the vacation usage for 2011. On December 14, the Company supplied the same type information for 2010. The delay by the Company in providing this information was unreasonable. The information sought was not complex and limited to six employees. The Company failed to provide information with respect to sick leave, holiday, and personal days usage. The delay in providing some and outright failure to furnish other of this information violates Section 8(a)(5) of the Act and I so find.

I find information regarding applications and reports by the Company to the Town of Hempstead's Industrial Development Agency regarding weatherization and renovation work to be performed at the 590-600 Fulton Avenue facility herein, and the names of the contractors to perform the work, as well as, a description of the work already performed and expected to be performed to be relevant information. The Union could, for example, ascertain if any of the work could be unit work. I find the Company's delay in providing this information was unreasonable. The Company obviously had, or could obtain, copies of the applications, however, such was not provided until December 21. The Company did provide a description of the contractors work on October 12, however, that was approximately 4 months after the request and no valid explanation was advanced for the delay. The names of the contractors, which were surely known to the Company, were not provided until November and reports, if any, submitted to the Industrial Development Agency were never provided. These unreasonable delays and outright failure, in part, to provide this requested information violates Section 8(a)(5) of the Act and I so find.

The request related to the Company's bargaining proposal for alternate health care coverage for the unit employees is clearly a request for relevant information. It would appear the Company would have such information at the time it made its bargaining proposal. The Company, without adequate explanation, did not provide any responsive information until some 4 months later (October 12), and again thereafter, on November 9 and or 30. The delay in providing this relevant information violates Section 8(a)(5) of the Act and I so find.

The requests outlined in the Union's October 22 letter and the Company's responses are discussed above and need not be restated here.

In summary, I find the Company, timely provided the Union with the days of work for the unit employees. I find the Company never provided the Union the regular weekly hours for the unit employees; never provided the Union with employee Ramnauth's daily and weekly work hours; never provided the Union records with respect to sick leave, holiday, and personal days usage for the unit employees; and, never provided the Union any Industrial Development Agency reports it submitted to the Town of Hempstead, New York. I find all other requested information was provided by the Company to the Union but only after unreasonable delays in doing so.

#### CONCLUSIONS OF LAW

1. The Company 590-600 Realty Corp., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.



2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Company violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union relevant information it had requested namely weekly hours for unit employees, employee Ramnauth's daily and weekly hours, records for Unit employees with respect to sick leave, holiday and personal days usage and Industrial Development Agency reports submitted to the Town of Hempstead, New York, and, by unreasonably delaying to provide all other relevant information requested by the Union and described fully elsewhere herein.

### THE REMEDY

Having found the Company has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I recommend the Company be ordered to timely furnish all relevant information requested by the Union. I specifically recommend the Company be ordered forthwith to furnish the Union the weekly work hours for Unit employees, employee Ramnauth's daily and weekly hours, records for Unit employees with respect to sick leave, holiday, and personal days usage, and any Industrial Development Agency reports submitted to the Town of Hempstead, New York. In furnishing this information, I am mindful the Company cannot furnish the timecards for employee Ramnauth because those timecards were destroyed by a member of the bargaining unit through no fault of the Company. I also recommend the Company post a notice to employees at its Hempstead, New York facility addressing the unfair labor practices found herein.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended <sup>5</sup>

### ORDER

The 590-600 Realty Corp., its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Refusing to furnish, or refusing in a timely manner to furnish, relevant information requested by the Union which information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of certain of 590-600 Realty Corp employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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<sup>5</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Forthwith provide to the Union the weekly hours for the unit employees; employee Ramnauth's daily and weekly work hours, sick leave, holiday, and personal days usage for the unit employees for 2010 and 2011, and any Industrial Development Agency reports submitted to the Town of Hempstead, New York.

(b) Within 14 days after service by the Region, post at its facility in Hempstead, New York, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Company's authorized representative, shall be posted by the Company and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as email, posting on an intranet or an internet site, or other electronic means, if the Company customarily communicates with its employees by such means. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since June 10, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Company has taken to comply.

Dated, Washington, D. C., April 27, 2012.

**William N. Cates**  
**Administrative Law Judge**

<sup>6</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

**WE WILL NOT** refuse to provide, or refuse to timely provide, relevant information requested by the Union that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of certain of our employees.

**WE WILL NOT** in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL**, promptly provide the Union with the weekly hours for the Unit employees; employee Premchand Ramnauth's daily and weekly work hours; sick leave, holiday and personal days usage for the Unit employees for 2010 and 2011; and, any Industrial Development Agency reports submitted to the Town of Hempstead, New York.

**590-600 REALTY CORP.**  
**(Employer)**

**Dated** \_\_\_\_\_ **By** \_\_\_\_\_  
**(Representative)** **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

Two MetroTech Center, 5th Floor Suite 5100, Brooklyn, NY 11201-3838  
(718) 330-7713, Hours of Operation: 9 a.m. to 5:30 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 330-2862